ADIEU, ANARCHISTS!

The Writ of Error Denied by the Supreme Court.

THE BOMB-THROWERS MUST GO

Next Friday Week the Condemned Seven Will Suffer the Penalty of their Crime.

The Anarchists Must Swing.

WASHINGTON, November 2.—The Chief Justice, after making the customary formal announcement of the case, said: "When, as in this case, application is made to us on the suggestion of one of our number to whom a similar application has been previously addressed, for the allowance of a writ of error to the highest court of the State under section 709, Revised Statutes, it is our duty to ascertain, not only whether any question reviewable here was made and decided in the proper court below, but whether it is of a character to justify us in bringing the judgment here for re-examination. In our opinion, the writ ought not to be allowed by the court, if it appears from the face of the record that the decision of the Federal question, which is complained of, was so plainly right as not to require argument, and especially if it is in accordance with our own well-considered judgment in similar cases. That is, in effect, what was done in Twitchell vs. Commonwealth, 7 Wall, 323, when the writ was refused because the questions presented by the record were "no longer subjects of discussion," although if they had been, in the opinion of the Court, "open," it would have been allowed. When under section 5 of our rule 6 a motion to affirm is united with a motion to dismiss for want of jurisdiction, the practice has been to grant the motion to affirm, when the question on which our jurisdiction depends, was so manifestly decided right that that case ought not to be held for further argument. Adopting a similar rule upon motions in open court for allowance of the writ, is apparent, for certainly we would not be justified as a Court in sending out a writ to bring up for review a judgment of the highest court of a State when it is apparent on the face of the record that it would be our duty to grant the motion to affirm as soon as it was made in the proper form. In the present case we have had the benefit of argument in support of the application, and while counsel have not deemed it their duty to go fully into the merits of the questions involved, they have shown us distinctly what the decisions were of which they complain, and how the questions arose. In this way we are able to determine, as a court in session, whether the errors alleged are such as to justify us in bringing the case here for review. We proceed, then, to consider what the questions are, and which, if it exists at all, our jurisdiction depends. The particular provisions of the Constitution of the United States on which counsel rely, are found in articles 4, 6, and 14 of the amendments. That the first ten articles of the fourteenth amendment were not intended to limit the powers of a State government in respect to their own citizens, but to operate on the national government alone was decided more than half a century ago, and that decision has been steadily adhered to since. It was contended, however, in the argument that "though originally the first ten amendments were adopted as a limitation on the Federal power, yet in so far as they secure and recognize fundamental rights, the common law rights of man, they make them privileges and immunities of man as a citizen of the United States and cannot now be abridged by a State under the fourteenth amendment. In other words, while the ten amendments as limitations on power only apply to the Federal government and not to States, yet, in so far as they declare or recognize the rights of persons, these rights are theirs as citizens of the United States and the fourteenth amendment as to such rights, limits the State power as the ten amendments had limited the Federal power. It is also contended that the provision of the fourteenth amendment which declares that no State shall deprive "any person of life, liberty or property without due process of law" implies that every person charged with crime in a State shall be entitled to trial by an impartial jury, and shall not be compelled to testify against himself. The objections are, in brief: First, that the statute of the State as construed by the court, deprived the petitioners of a trial by an impartial jury, and second, that Spies was compelled to give evidence against himself. Before considering whether the Constitution of the United States has the effect which is claimed it is proper to inquire whether the Federal questions relied on, in fact arise on the face of this record. One statute to which objection is made was approved March 12, 1874, and has been in force since July 2d of that year. The complaint is that the trial court, acting under this statute, and in accordance with its requirements compelled the petitioners against their will to submit to trial by a jury that was not impartial, and thus deprived them of one of the fundamental rights which they had as citizens of the United States under the national Constitution, and if the sentence of the court is carried into execution they will be deprived of their lives "without due process of law."

In Hopt vs. Utah, 120 U. S., 439, it was decided by this Court that when a challenge by a defendant in a criminal action to a juror for bias, actual or implied, is disallowed and the juror is thereupon peremptorily challenged by the defendant, and excused, and an impartial and competent juror is obtained in his place, no injury is done the defendant if, until the jury is completed, he has other peremptory challenges, which he can use, and so in Hayes vs. Missouri, 120 U. S. 71, it was said: "The right to challenge is a right to reject, not to select a juror. "If from those who remain an impartial jury is obtained, the constitutional right of the accused is maintained. Of the correctness of these rulings we entertain no doubt. We are, therefore, confined in this case to the rulings on challenges to jurors who actually sat on the trial. Of these there were but two, Theodore Denker, the third juror, who was sworn, and H. E. Sanford, the last, who was called and sworn after all the peremptory challenges of the defendants had been exhausted. At the trial the Court construed the statute to mean that "although a juror called as a juryman may have formed an opinion based upon rumor or upon newspaper statements, but has expressed no opinion as to the truth of newspaper statements he is still qualified as a juror, if he states that he can fairly and impartially render a verdict thereon in accordance with law and evidence, and the Court shall be satisfied of the truth of said statement. It is not a test question whether a juror will have the opinion which he has formed from newspapers changed by evidence, but whether his verdict will be based only upon an account which may here be given by witnesses under oath. Interpreted in this way the statute is not materially different from that of the Territory of Utah, which he had under consideration in Hopt vs. Utah supra, and to which we then gave effect. As that was a territorial statute passed by a Territorial legislature for the government of a Territory over which the United States had exclusive jurisdiction, it came directly within the operation of article 6 of the amendment, which guaranteed to Hopt a trial by an impartial jury. No one at the time suggested a doubt of the constitutionality of the statute, and it was regarded both in the Territorial courts and here as furnishing a proper rule to be observed by the Territorial court in empanelling an impartial jury in a criminal case. Indeed, the rule of the statute of Illinois, as it was construed by the trial court, was not materially different from that which has been adopted by courts in many of the States, without legislative action. Without pursuing this subject further, it is sufficient to say that we agree entirely with the Supreme Court of Illinois in the opinion that the statute on its face, as construed by that court, is not repugnant to section 9, article 2, of the Constitution of that State, which guarantees to an accused party in every criminal prosecution a speedy trial by an impartial jury of the county or district, in which the offense is alleged to have been committed. As this is substantially the provision of the Constitution of the United States on which the petitioners now rely, it follows that even if their position as to the operation and effect of that Constitution is correct, the statute is not open to the objection which is made against it."

The court then reviewed fully the proceedings of the State Court in the examination of jurors Denker and Sanford, and sustained the rulings of Judge Gary, in the matter, touching the challenge of these two jurors by the defendants for cause. In Reynolds vs. United States 98, United States Laws, 145 to 156, it was decided by this Court that in order to justify a reversal of a judgment of the Supreme Court of the Territory of Utah for refusing to allow a challenge to a juror in a criminal case on the ground that he had formed and expressed an opinion as to the issues to be tried, it will be made clearly to appear that upon evidence, the Court ought to have found the juror had formed such an opinion, and that he could in law be deemed impartial, the case must be one in which it is manifest the law left nothing to the conscience or discretion of the Court. If such is the degree of strictness which is required in ordinary cases of writs from one court to another, in the same general jurisdiction, we ought to be careful that it is not relaxed in a case like this, when the ground relied on for a reversal by this Court of the judgment of the highest court of a State, is that the error complained of is so great as to amount in law to a denial by the State of a trial by an impartial jury to one who is accused of crime. We are unhesitatingly of the opinion that no such case is disclosed by this record.

We come now to consider the objection that defendant Spies was compelled by the Court to be a witness against himself. He voluntarily offered himself as a witness, on his own behalf, and by so doing he became bound to submit himself to proper cross-examination. The complaint is that he was required, on cross-examination, to state whether he had received a certain letter which was shown, purporting to have been written by Johann Most, and addressed to him, and upon his saying that he had, the Court allowed the letter to be read in evidence against him. This, it is claimed, was not proper cross-examination. It is not contended that the subject to which the cross-examination related was not pertinent to the issue to be tried, and whether a cross-examination must be confined to matters pertinent to the testimony in chief, or may be extended to matters in issue, is certainly a question of State law, in courts of a State, and not of Federal law. Something has been said in the argument about an alleged unreasonable search and seizure of papers and property of some of the defendants and their use in evidence on the trial of the case. Special reference is made in this connection to the letter of Most, about which Spies was cross-examined, but we have not been referred to any part of the record in which it appears that objection was made to the use of the evidence on that account, and upon this point the Supreme Court of the State, in that part of its opinion which has been printed with this motion, remarks as follows: "The objection that the letter was obtained from defendant by an unlawful seizure is made for the first time in this court. It was not made on the trial in the court below. Such an objection as this, which is not suggested by the nature of offered evidence, but depends upon proof of an outside fact, should be made on the trial. The defense should have proved that Most's letter was one of the letters illegally seized by the police, and should then have excluded or opposed its admission, on the ground that it was obtained by such illegal seizure. This was not done, and therefore we cannot consider the constitutional questions supposed to be involved. Even though the Court was wrong in saying that it did not appear that the Most letter was one of the papers illegally seized, it still remains uncontradicted that no objection was made in the trial court to the admission on that account. To give us jurisdiction under section 709 of the Revised Statutes, because of the denial by a State court of any title, right, privilege or immunity claimed under the Constitution or any treaty or statute of the United States, it must appear that such title, right privilege or immunity was specially set up or claimed at the proper time, and in the proper way to be reviewable. The decision must be against the right so set up or claimed. As the Supreme Court of the State was reviewing the decision of the trial court, to make the question reviewable here it must appear that the claim was made in that court, because the Supreme Court was only authorized to review the judgment of that court for errors committed there, and we can do no more. This is not, as seems to be supposed by one of the counsel for the petitioners, a question of waiver of a right under the Constitution, laws or treaties of the United States, but a question of claim. If not set up or claimed in the proper court below, the judgment of the State Court in the action is conclusive, so far as the right of review here is concerned. The question whether the letter obtained as claimed would have been competent evidence is not before us, and therefore no foundation is laid under this objection for the exercise of our jurisdiction. As to the suggestion by counsel for the petitioners, Spies and Fielden, that Spies having been born in Germany and Fielden in Great Britain, they have been denied by the decision of the court below the rights guaranteed to them by the treaties between the United States and their respective countries, is sufficient to say that no such questions were made and decided in either of the courts below, and they cannot be raised in this court for the first time. We have not been referred to any treaty, neither are we aware of any under which such a question could be raised. Being of the opinion, therefore, that the Federal questions presented by counsel for the petitioners and which they say they desire to argue are not in fact involved in the determination of the case as it appears on the face of the record, we deny the writ.

The decision of the Court was unanimous.

CHICAGO, November 2.—The jail authorities did not evince any surprise when informed of the Anarchist decision. "It was just what was expected," said jailor Folz. The Anarchists received the news unmoved and refused to express any opinion in the matter.

The Cotton Trade.

MANCHESTER, November 2.—The *Guardian's* commercial article says: "The volume of business has not improved. The demand is moderate. Standard makes of choice shirtings are quiet and firmly held. Inquiry from India weak. Most of the other foreign markets and home trade also weak. The extent of running engagements and the firmness of cotton sustain prices. Business in export yarns is small. Bundled yarn for the far east is exceedingly firm and well contracted for, but India spinnings are weak. Cloth generally active. Moderate inquiry for finer lighter India fancies, while dhooties are neglected. Best and medium printers firm; sales small; common freely offered at previous prices. Small miscellaneous business in heavy goods at former rates. Best makes of Mexicano firm. The demand for colored woven goods lessened decidedly during the past three weeks.

The Irish.

CORK, November 2.—William O'Brien and Mandeville were quietly removed from jail here at 5 o'clock this morning, and taken away on a special train. It is supposed they are to be placed in prison in Dublin. News of their removal was not known to the people of Cork till 10 o'clock. It caused tremendous excitement.

DUBLIN, November 2.—O'Brien has been lodged in jail at Tullamoole, fifty miles from Dublin.

MISCELLANEOUS.

LEGAL NOTICE.

In the Probate Court in and for Salt Lake County, Territory of Utah.

In the Matter of the Estate of Joseph M. Allen, deceased.

Order appointing time and place for settlement of final account and to hear petition for distribution.

ON READING AND FILING THE PETITION of John S. Barnes, administrator, with the will annexed, of the estate of Joseph M. Allen, deceased, setting forth that he has filed his acount of his administration upon said estate in this Court to September 30th, 1887, and that a portion of said estate remains to be divided among the heirs of said deceased, and praying among other things for an order allowing said account and of distribution of the residue of said estate among the persons entitled.

It is ordered that all persons interested in the estate of the said Joseph M. Allen, deceased, be and appear before the Probate Court of the County of Salt Lake, at the Court Room of said Court, in the County Court House, on the 17th day of November, 1887, at 11 o'clock a. m., then and there to show cause why an order allowing said account and of distribution should not be made of the residue of said estate among the heirs and devisees of the said Joseph M. Allen, deceased, according to law, and the discharge of the administrator, with the will annexed.

It is further ordered that the Clerk cause copies of this order to be served on Joseph Milton Allen and Gertrude Dise Allen, minor heirs of said deceased, and posted in three public places in Salt Lake County and published in the SALT LAKE DAILY HERALD, a newspaper printed and circulated in Salt Lake County, three weeks successively prior to said 17th day of November, 1887.

ELIAS A. SMITH,
Probate Judge.

Date: October 21st, 1887.

TERRITORY OF UTAH,
COUNTY OF SALT LAKE, } ss.

I, John C. Cutler, Clerk of the Probate Court in and for the County of Salt Lake, in the Territory of Utah, do hereby certify that the foregoing is a full, true and correct copy of an order appointing time and place for settlement of final account and to hear petition for distribution in the matter of the estate of Joseph M. Allen, deceased, as appears of record in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court, this 24th day of October, A. D. 1887.

[SEAL]

JOHN C. CUTLER,
Probate Clerk.
By H. S. CUTLER, Deputy.